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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

RANDOLPH FRAILS,

Petitioner,

v.

BRAD RAFFENSPERGER,

Respondent.

CIVIL ACTION FILE

NO. 24CV006314

JUDGE RACHEL KRAUSE

FINAL ORDER

**ORDER DENYING MOTION TO STAY CERTIFICATION
OF ELECTION RESULTS AND DISMISSING PETITION AS MOOT**

This case is before the Court on Petitioner's Petition for Judicial Review; Motion for Emergency Hearing; Motion to Stay the Certification of the Election Results Until Elector's Challenge is Decided, filed on May 17, 2024. As requested by Petitioner, the Court held a hearing on Friday, June 7, 2024, after timely notice to the Attorney General, representing Respondent Secretary of State. (Dkt. 11, 12.) Counsel for candidate Jeff Davis, whose qualification is the subject of Petitioner's challenge, was present, and his Motion to Intervene was verbally granted (without objection) at the hearing. As of the hearing, the election had not yet been certified. Respondent's counsel advised the certification process was underway and could be accomplished at any time, but must be accomplished by today, June 7, 2024, at 5 p.m.

Petitioner Randolph Frails asked the Court to stay certification of the election, consider the merits of Petitioner's challenge, and resolve the legal question of whether residency must be established at the time of qualification or at the time of election. Respondent argues that the relief sought by Petitioner is "pre-election" relief and

mooted by the occurrence of the election. Petitioner responds that the issue of when residency must be demonstrated presents an exception to mootness because it is an issue that will continue to arise but evade review.

At approximately 1:40 p.m. today, the Court was advised by Respondent's counsel, Mr. Willard, that all Court of Appeals elections had been certified, including the election to replace Judge Yvette Miller at issue in this case. As a result, the issue of whether to grant a stay of the certification is now moot. Beyond that, the entire challenge is now moot because the election, now certified, has already occurred.¹

A court should not take any action to consider the merits of a moot case unless an exception applies. *Sweet City Landfill v. Elbert County*, 347 Ga. App. 311, 318 (2018); *see also In the Interest of M. F.*, 305 Ga. 820 (2019). One exception to mootness is when an issue is "capable of repetition yet evades review." *Collins v. Lombard Corp.*, 270 Ga. 120, 121 (1998). Mootness in this context must be viewed narrowly. *Id.* at 121-122; *see also Ga. High School Assn. v. Charlton County School Dist.*, 349 Ga. App. 309, 314 (2019). Additionally, a court should not address moot issues even though a party might benefit from adjudication of the question. *Cardinale v. State*, 363 Ga. App. 873, 877 (2022).

As noted during the hearing, although Administrative Law Judge Howells

¹ *Scoggins v. Collins*, 288 Ga. 26, 27 (2010), *disapproved on other grounds by Parham v. Stewart*, 308 Ga. 170; *see also Bodkin v. Bolia*, 285 Ga. 758, 759–760 (2009); *Randolph County v. Johnson*, 282 Ga. 160, 161(1) (2007); *Brooks v. Brown*, 282 Ga. 154, 154, 646 S.E.2d 265 (2007) (in general, pre-election challenges to a candidate's qualifications become moot once the general election at issue has occurred); *Jordan v. Cook*, 277 Ga. 155, 157, 587 S.E.2d 52 (2003).

found that Mr. Davis was not domiciled at the MLK Jr. Drive address, as listed on his Declaration of Candidacy and Affidavit on March 4, 2024, the Secretary of State did not address that issue at all. Instead, on Petitioner's request for agency review, Secretary of State Raffensperger made a factual determination that Mr. Davis had established he was a resident of the State of Georgia as of the date he qualified to run for election. Therefore, the Secretary's Final Decision determined there was no need to address or decide whether the relevant time for demonstration of residency was on the date of qualifying or the date of the election.

While Petitioner may be right that he and other electors could benefit from a determination of this question, it was not addressed by the Secretary in its decision. Therefore, any effort by this Court to consider the timing of residency for election qualification "would amount to the determination of an abstract question not arising upon existing facts or rights." *Cardinale*, 363 Ga. App. at 875; *City of Comer v. Seymour*, 283 Ga. 536, 537 (2008); *see also Collins v. Lombard Corp.*, 270 Ga. 120, 121 (1998).

For these reasons, Petitioner's Motion for Stay is DENIED as moot and no exception to mootness applies to require (or authorize) the Court to address the merits of Petitioner's challenge. As a result, the Petition is hereby DISMISSED.

IT IS SO ORDERED, this 7th day of June, 2024.



The Honorable Rachel R. Krause
Fulton County Superior Court
Atlanta Judicial Circuit

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